



September 28, 1999

Ms. Joni M. Vollman  
Office of the District Attorney  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR99-2721

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127685.

The Harris County District Attorney's Office (the "district attorney") received a request for information concerning an aggravated kidnapping. You have released certain documents to the requestor, but contend that the remaining requested information is excepted from public disclosure pursuant to sections 552.101, 552.108(a)(3), and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of documents submitted.<sup>1</sup>

You first contend that the documents you submitted to this office as Exhibit A constitute "work product" that is excepted from public disclosure pursuant to section 552.108(a)(3). Section 552.108(a)(3) provides that information is excepted from public disclosure under the Public Information Act if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) if it is information that reflects the mental impressions or legal reasoning of an attorney representing the state. You describe the contents of Exhibit A as consisting of handwritten and typed notes of prosecutors and their investigators, inter-office memoranda, the cover folder of the prosecutor's file, copies of subpoenas which contain the prosecutor's handwritten notes, central intake sheets, and juror cards containing the prosecutor's notations. Assuming these documents were either created by an attorney representing the state, or by an individual working at the direction of such an attorney, we agree that the district attorney may withhold the documents contained in Exhibit A pursuant to section 552.108(a)(3).

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

However, the juror cards in Exhibit A are governed by article 35.29 of the Code of Criminal Procedure. Article 35.29 provides as follows:

Information collected by the court or by a prosecuting attorney during the jury selection process *about a person who serves as a juror*, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court *in which the person is serving or did serve as a juror*. On a showing of good cause, the court shall permit disclosure of the information sought. [Emphasis added].

Article 35.29 makes confidential certain personal information pertaining to only those individuals who actually served on the petit jury in a criminal trial. We have marked a representative sample of the categories of information the district attorney must withhold in compliance with the language and intent of the statute. Except for the prosecutor's notations which are excepted under section 552.108(a)(3), the district attorney may not withhold any additional information contained in the juror cards pursuant to article 35.29.

You must release the juror cards of those individuals who did not serve on the petit jury in a criminal trial. However, before these individuals' juror cards are released, you must redact the social security numbers and the driver's license numbers under sections 552.101 and 552.130 respectively. The social security numbers in the reports may be confidential if they were obtained or are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. section 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). Section 552.130 excepts information that relates to a driver's license issued by an agency of this state.

You contend that the documents in Exhibit B are excepted from public disclosure pursuant to section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Exhibit B consists of criminal history record information ("CHRI"). We agree that the district attorney must withhold pursuant to statutory law all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI

generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The district attorney therefore must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code.

You next contend that Exhibit C contains peace officers' home telephone numbers and home addresses that are excepted from disclosure under section 552.117(2). The district attorney must withhold the officers' home telephone numbers and home addresses from disclosure under section 552.117(2).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 127685

Encl. Submitted documents

cc: Mr. Justin Ardoin  
8210 Powell  
Houston, Texas 77088  
(w/o enclosures)